

CALIFORNIA OFFICE OF ADMINISTRATIVE LAW

SACRAMENTO, CALIFORNIA

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KARON FONG EU
1987 OAL Determination No. 812
OF CALIFORNIA

In re:

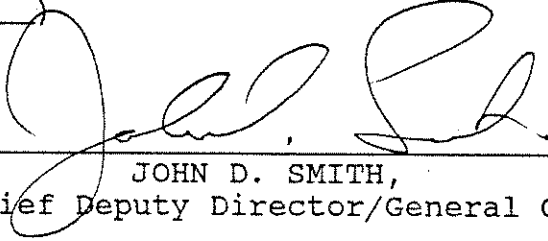
Request for Regulatory)
Determination filed by)
the California Teachers)
Association concerning)
Course Standards issued)
by the Board of Governors)
of the California Commu-)
nity Colleges¹)

1987 OAL Determination No. 812
[Docket No. 87-001]

September 22, 1987

Determination Pursuant to
Government Code Section
11347.5; Title 1,
California Administrative
Code, Chapter 1, Article 2

Determination by:


JOHN D. SMITH,
Chief Deputy Director/General Counsel

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SYNOPSIS

The issue presented to the Office of Administrative Law was whether certain course standards issued by the Board of Governors of the California Community Colleges were "regulations" required to be adopted pursuant to the Administrative Procedure Act.

The Office of Administrative Law has concluded that the Board of Governors of the California Community Colleges has unlawfully modified and supplemented duly adopted regulations setting community college course standards.

THE ISSUE PRESENTED 2,3

The Office of Administrative Law ("OAL") has been requested to determine whether or not an eight-page document entitled "Revisions to Regulations Strengthening the Associate Degree" (hereinafter, "Proposed Revisions"), dated September 18-19, 1986, issued by the Board of Governors of the California Community Colleges ("Board") is a "regulation" as defined in Government Code section 11342, subdivision (b), which is therefore invalid and unenforceable unless adopted as a regulation and filed with the Secretary of State in accordance with the Administrative Procedure Act ("APA").

THE DECISION 4,5,6,7

The Office of Administrative Law finds that the Proposed Revisions issued by the Board of Governors of the California Community Colleges (1) is subject to the requirements of the APA, (2) is a "regulation" as defined in the APA and (3) is therefore invalid and unenforceable unless adopted as a regulation and filed with the Secretary of State in accordance with the APA.⁸

I. AGENCY, AUTHORITY, APPLICABILITY OF APA; BACKGROUND

Agency

In 1960, the Donahoe Higher Education Act dramatically altered the structure of public postsecondary education in California, administratively separating the "junior" colleges, the California State University and Colleges (CSU), and the University of California (UC), as well as delineating distinct functions for each of these three entities and outlining how their functions were to mesh.⁹ In 1967, the Board of Governors was created to govern the "junior" college system.¹⁰ In 1976, in the process of reorganizing and amending the Education Code into its present form, the Legislature dropped the term "junior" in favor of the term "community" college to describe the 106 local institutions authorized to offer not only courses paralleling the first two years of instruction at UC and CSU, but also courses constituting associate of arts and certificate programs.^{11,12}

Education Code section 71023 provides:

"It is the intent of the Legislature that the Board of Governors of the California Community Colleges shall provide leadership and direction in the continuing development of community colleges as an integral and effective element in the structure of public higher education in the state. The work of the board shall at all times be directed to maintaining and continuing, to the maximum degree permissible, local autonomy and control in the administration of the community colleges." [Emphasis added.]

The Board closely monitors local course and curriculum changes. Under Title 5, California Administrative Code (CAC), section 55001(c), community colleges must report the classification of virtually all courses

" . . . in accordance with the . . . standards set in Section 55002 by transmitting the following information to the Chancellor's Office:

(1) the unique static identifier and the course title for all credit and noncredit courses.

(2) the classification of each credit and noncredit course in accordance with its primary objective, consistent with guidelines published by the Chancellor.

(3) Whether the course is offered as credit or noncredit.

(4) Whether the course transfers to CSUC or UC or both.

. . . . " [Emphasis added.]

According to Title 5, CAC, section 55100, with one significant exception,

" . . . each course to be offered by a community college shall be approved by the Chancellor before the course is offered by the college. The course shall be submitted to the Chancellor on forms provided by the Chancellor's Office." [Emphasis added.]

The above noted exception to the prior approval requirement concerns individual courses which are part of an educational program previously approved by the Chancellor. Such courses, however, must nonetheless be reported as required by section 55001.¹³

Since the passage of Proposition 13 in 1978, community colleges have received most of their funding from the state. State funding is controlled by the Board and is available only for courses and programs approved by the Board.

Authority¹⁴

The Board has been granted general rulemaking authority by section 71020 of the Education Code, which provides:

"The board shall have the power to adopt such rules and regulations, not inconsistent with law, as are necessary for its own government and to enable the board to carry out all powers and responsibilities vested in it by law." [Emphasis added.]

Education Code section 66700 provides the Board with authority for setting minimum operating standards for community colleges:

"The public community colleges are secondary schools and shall continue to be a part of the public school system of this state. The Board of Governors of the California Community Colleges shall prescribe minimum standards for the formation and operation of public community colleges and exercise general supervision over public community colleges." [Emphasis added.]

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Education Code section 71027 specifically requires the Board to set course standards:

"The Board of Governors of the California Community Colleges shall establish criteria and standards for credit and noncredit classes." [Emphasis added.]

Under the above-noted code sections, the Board has express rulemaking authority.

Applicability of the APA to Agency's Quasi-Legislative Enactments

The APA applies to all state agencies, except those "in the judicial or legislative department."¹⁵ Since the Board is in neither the judicial nor the legislative branch of state government, we conclude that APA rulemaking requirements generally apply to the Board.^{16,17}

Background

At least as early as 1981, community college faculty

"began to express two concerns:

(1) That the range of skill levels among students in many degree-related classes was so broad that it was impossible to teach the course 'at the college level'; and

(2) That, as a consequence, the associate degree from a California community college was losing its credibility."¹⁸

In 1982, "after a series of informal joint meetings, the executive boards of the [community college] Faculty Senate Association and the Association of Chief Instructional Officers submitted to the Chancellor's office a set of criteria for the conduct of associate degree courses. The [proposed] new Title 5 regulations [the "Proposed Revisions"] are a direct response to that initial document."¹⁹

In 1983, in response to the above concerns, the Chancellor created the Task Force on Academic Quality, which in a January 1985 report forwarded policy recommendations in the areas of academic standards, matriculation²⁰, and remediation²¹. The Task Force's policy recommendations on academic standards were incorporated into a rulemaking proposal approved by the Board and noticed for public comment in May 1985.²²

Before the rulemaking proposal could become a duly adopted²³ regulation with the force and effect of law, however, it was necessary for it to be reviewed for compliance with the requirements of the APA. In California, before proposed regulations can be filed with the Secretary of State, before they can be printed in the CAC, and before they become legally effective, they must be approved by an executive branch control agency, the Office of Administrative Law.²⁴

The rulemaking proposal approved by the Board in May 1985 included the following elements: repeal of Title 5, CAC, section 55002, adoption of a new section 55002, and amendment of section 55805.

Pursuant to Government Code section 11349.1, in September 1985, the Board submitted the course standards proposal to OAL for review. Under the APA, OAL is obligated to review each proposal for compliance with not only the six "substantive standards" ("necessity," "authority," "clarity," "consistency," "reference," "nonduplication"), but also procedural requirements (e.g., "was the public notice complete?").

OAL's review of the Board's proposal revealed a number of serious "clarity" and "necessity" deficiencies. As then permitted by law,²⁵ OAL contacted the Board, notified it of the nature of the legal deficiencies, and advised the Board that it had two options at that point--formal disapproval of the proposal by OAL or withdrawal of the proposal by the Board. The Board elected the latter option. In a "withdrawal letter" dated October 18, 1985, OAL confirmed the withdrawal decision and detailed the proposal's deficiencies.²⁶

In May 1986, the Board approved a revised version of the 1985 rulemaking proposal. This revised proposal dealt with some of the OAL-identified deficiencies, not including the failure to clarify what was meant by "critical thinking" and "college level."

The Board did not submit this revised proposal to OAL before May 1986--the statutory deadline²⁷ for submitting rulemaking proposals stemming from the May 1985 public notice. The Board then re-approved the revised proposal in September 1986, clearing the way for resubmittal to OAL. It is the staff report that was adopted by the Board at this September 1986 meeting (the "Proposed Revisions") that is the subject of this Request for Determination.

The rulemaking was renoticed in September 1986. However, the Proposed Revisions were not submitted to OAL within one year of the public notice. Our records indicate to date that the proposal has not been resubmitted to OAL. Indeed, before the

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proposal can be submitted to OAL, a new notice inviting public comment must be published in the Notice Register.

The Proposed Revisions contain at least two dozen provisions falling into these categories: (1) general implementation guidelines, (2) rules applying to associate degree credit course, (3) rules applying to associate degree noncredit courses, (4) rules applying to non-credit courses, and (5) rules applying to community service classes.^{28, 29}

A Request for Determination was filed with OAL on January 29, 1987, concerning these Proposed Revisions.³⁰ The requester in this determination proceeding is William C. Dixon, on behalf of the California Community College Association (CCA)/California Teachers Association (CTA)/National Education Association (NEA) Executive Committee (hereafter "CTA").³¹ Many members of the community college division of CTA are faculty members of California community colleges. Mr. Dixon is a member of the faculty at Solano Community College (Solano).

A nine-page document prepared by Solano was submitted as part of the Request. This document, entitled "Guidelines for Completing Official Course Information (Section K)," contains the following passages:

"These guidelines are based on Standards and Criteria for Courses and Classes, California Administrative Code, Title 5, Section 55002 and 558055 [sic], adopted by the Board of Governors of the California Community Colleges, September 19, 1986."³²

"Associate degree level courses are required by Title 5 to have English and math prerequisites to insure that students can perform the math, reading, and writing competencies required for success in college-level courses across the disciplines."³³

"Objectives for Associate degree courses must indicate that students will learn critical thinking skills and be able to apply concepts at college level." [Emphasis added.]³⁴

"Title 5 requires the use of college-level reading materials in Associate Degree courses."³⁵ [Second emphasis added.]

It is, thus, apparent that Solano perceives the Proposed Revisions as Title 5 "requirements". As a result of the issuance of the Proposed Revisions by the Board, Solano has adopted guidelines and criteria for implementation of the new "requirements."³⁶ The guidelines contain course information that is used for the Solano College Catalog, master course file, schedule and for

articulation with other colleges. Solano also prepared a "Proposed Timeline for Completing Curriculum Review", indicating that the review process for all Solano courses is to be completed by November 1987.

II. DISPOSITIVE ISSUES

There are two main issues before us:³⁷

- (1) WHETHER THE CHALLENGED RULES ARE REGULATIONS WITHIN THE MEANING OF THE KEY PROVISION OF GOVERNMENT CODE SECTION 11342.
- (2) WHETHER THE CHALLENGED RULES FALL WITHIN ANY ESTABLISHED EXCEPTION TO APA REQUIREMENTS.

FIRST, WE INQUIRE WHETHER THE CHALLENGED RULES ARE "REGULATIONS" WITHIN THE MEANING OF THE KEY PROVISION OF GOVERNMENT CODE SECTION 11342.

In pertinent part, Government Code section 11342, subdivision (b) defines "regulation" as:

" . . . every rule, regulation, order or standard of general application or the amendment, supplement or revision of any such rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure" [Emphasis added.]

Government Code section 11347.5, authorizing OAL to determine whether or not agency rules are "regulations," provides in part:

"No state agency shall issue, utilize, enforce or attempt to enforce any guideline, criterion, bulletin, manual, instruction [or] . . . standard of general application . . . which is a regulation as defined in subdivision (b) of section 11342, unless the guideline, criterion, bulletin, manual, instruction [or] . . . standard of application . . . has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter" [Emphasis added.]

Applying the definition of "regulation" found in Government Code section 11342, subdivision (b) involves a two-part inquiry:

First, is the informal rule either

- o a rule or standard of general application or
- o a modification or supplement to such a rule?

Second, does the informal rule either

- o implement, interpret, or make specific the law enforced or administered by the agency or
- o govern the agency's procedure?

The answer to both parts of this inquiry is "yes."

Title 5, CAC, section 55002 sets forth "Standards and Criteria for Courses and Classes," consisting of minimum requirements for a credit course, a noncredit course, and a community services class. The Proposed Revisions create new standards and criteria for two kinds of credit courses: those which may be applied toward the associate degree and those which may not be applied toward that degree. The Proposed Revisions also create new standards and criteria for noncredit courses and community service classes.

In addition, the Proposed Revisions create at each college a curriculum committee and specify the composition of that committee. The committee is responsible for evaluating all courses for compliance with the new standards and criteria and for recommending the courses for approval by the district governing board. Current regulations require community college districts to establish criteria to determine which courses may be used in implementing its philosophy on the associate degree and general education. The Proposed Revisions would specify by academic level which courses must be included in those which count toward the associate degree.^{38, 39}

The uncontested facts show that the Proposed Revisions document was issued to Solano Community College.⁴⁰ Since these Proposed Revisions are meant to modify and supplement existing regulations in Title 5 of the CAC, apply to community college courses and classes statewide, and affect students taking, interested in taking, or who will be taking courses or classes at community colleges, they are clearly modifications and supplements to rules or standards of general application. The document title, "Revisions to Regulations Strengthening the Associate Degree," reveals the Board's recognition of the substantive nature of these changes to existing regulations.

As demonstrated by Education Code section 71027, quoted above in Part I "Authority," the Board has a statutory mandate to establish criteria and standards for credit and noncredit

classes. The Proposed Revisions clearly implement this statute enforced and administered by the Board. We find that the Proposed Revisions implement, interpret and make specific the law enforced or administered by the Board, thus answering the second part of the inquiry also in the affirmative.⁴¹

We conclude, therefore, that the PROPOSED REVISIONS ARE STANDARDS OF GENERAL APPLICATION, applying statewide to all community colleges, their faculty, students and potential students. These REVISIONS ALSO INTERPRET OR MAKE SPECIFIC THE LAW ENFORCED BY THE BOARD. As stated earlier, the Board is responsible for the administration of standards and criteria for credit and noncredit courses and classes for community colleges. Thus, the challenged PROPOSED REVISIONS ARE "REGULATIONS" WITHIN THE MEANING OF THE APA.

SECOND, WE INQUIRE WHETHER THE CHALLENGED RULES FALL WITHIN ANY LEGALLY ESTABLISHED EXCEPTION TO APA REQUIREMENTS.

Rules concerning certain activities of state agencies--for instance, "internal management"--are not subject to the procedural requirements of the APA.⁴² We conclude that none of the general exceptions (set out in note 42) apply.

HAS A SPECIFIC EXEMPTION APPLYING SOLELY TO COURSE CRITERIA BEEN EXPRESSLY CREATED BY THE LEGISLATURE?

Since the Board did not to file a Response to the Request, it is not wholly clear what the Board relies upon in the way of legal justification for its issuance of the challenged rule. Certain statements in the Proposed Revisions⁴³ and in the Course Standards Handbook⁴⁴ indicate, however, that the Board may be relying upon Education Code section 78200.5(a), which provides:

"(a) The Chancellor's office of the California Community Colleges shall prepare, distribute, and maintain a detailed handbook for use by the educational agencies and regional [adult and vocational education] councils established pursuant to section 8020. The handbook shall contain course approval criteria, implementation plans for administrative regulations, and procedures for securing course and programs approvals." [Emphasis added.]

The legal argument would be that section 78200.5(a) grants the Board the power to "implement" the Proposed Revisions prior to approval by OAL and filing with the Secretary of State. The Proposed Revisions are reproduced in section 2 of a 246-page document entitled the Course Standards Handbook.

The above legal justification will not, however, withstand close scrutiny. Section 78200.5(a) was enacted in 1981, approximately two years before the effective date of

Government Code section 11347.5 (which outlawed regulatory manuals, guidelines, instructions, etc.).⁴⁵ We conclude that Education Code section 78200.5(a) does not effectively exempt the Board from compliance with the APA. Issuing and utilizing the course standards contained in the Proposed Revisions prior to formal adoption pursuant to the APA was unlawful. We reach these conclusions for the following reasons:

1. No matter how logical or necessary, changes to existing CAC provisions may be accomplished only by revising existing regulations.

This basic APA principle was insightfully applied to a specific factual situation in a 1977 opinion of the Attorney General of California. The Attorney General was asked whether or not Board regulations which limited community college academic senate membership to "persons who teach full time" (emphasis added) could be interpreted to permit part-time faculty members to serve in a community college academic senate. Noting that there were excellent policy reasons for including part-time faculty, the Attorney General stated:

"Nevertheless voting membership in community college academic senates is limited by regulation to full-time faculty. The inclusion of part-time faculty, if deemed appropriate in light of prevailing employment patterns, may be accomplished only by means of amending the existing regulations." [Emphasis added.]

Similarly, in the case at hand, it may well be that the time is ripe for strengthening academic standards in community colleges. However, this significant reform may be accomplished "only by means of amending the existing regulations." The 1977 opinion notes that interested parties had advised the Attorney General that several community college academic senates actually allowed part-time faculty membership with limits on the extent of their participation. The opinion nonetheless concluded that "inclusion of part-time faculty . . . may be accomplished [legally] only by means of amending the existing regulations."

2. Exemptions from APA requirements must be express.

According to Government Code section 11346, APA exemptions must be "express," that is, the statute purportedly creating the exemption must explicitly

state that the matter in question is exempt from the rulemaking provisions of the APA.

Clearly, Education Code section 78200.5(a) does not create an express APA exemption. As discussed in an earlier determination,⁴⁶ the mere fact that a statute directs an agency to perform a certain act does not mean that the Legislature has thereby waived all rulemaking requirements which would ordinarily apply to that act. Interpreting section 78200.5(a) so as to harmonize it with the APA,⁴⁷ we conclude that the Board must both issue the handbook and conform to the requirements of the APA.

That is, the Board must not only follow APA public notice and comment requirements in adopting "course approval criteria," but must also publish these criteria in a handbook. We note that Government Code section 11347.5 specifically forbids agencies to issue regulatory "criteria."

Section 78200.5(a) also provides that "the handbook shall contain . . . implementation plans for administrative regulations." (Emphasis added.) We reject the theory that this provision constitutes any sort of an express APA exemption. We reach this conclusion both for the reasons outlined above and for the reasons set forth below. In section 78200.5(a), the phrase "administrative regulations" clearly refers to regulations that have been adopted in compliance with the APA. Clearly, the phrase does not cover the challenged rule in this proceeding, which has not been formally adopted.

We must also consider the meaning of the phrase "implementation plans." Initially, we note this phrase is qualified by the term "for administrative regulations." Thus, only "implementation plans" relating to duly adopted CAC provisions are covered by the Education Code section. Since the Proposed Revisions at issue in this Determination have not been formally adopted into the CAC, the Education Code provision is inapplicable. Even assuming we were dealing with duly adopted CAC provisions, we would be compelled by the harmonizing principle of statutory interpretation⁴⁸ to conclude that the phrase "implementation plans" refers to matters such as regional workshops and names of contact persons in the Chancellor's office, rather than to guidelines or instructions of the type outlawed in Government Code section 11347.5.

3. Legal questions involving interpretation of the APA should be discussed in light of the twin goals of the APA, meaningful public participation and effective judicial review.

As noted in earlier determinations,⁴⁹ the primary goals of the APA are meaningful public participation⁵⁰ and effective judicial review.⁵¹ It is in light of these goals that we must assess the legality of the Board's apparent attempt to largely implement the new course standards prior to accepting public comments and submitting the revisions to OAL. Such an approach to the problem clearly would not permit meaningful public participation.⁵² Further, if the new course standards were challenged in court prior to completion of the rulemaking process, the court would not have the benefit of a complete rulemaking record--making it more difficult for the court to do its work and more difficult for the Board to defend the enactments.

4. Before proposed regulations can take legal effect in California, they must be approved by OAL.

The Proposed Revisions have not been approved by OAL. It is clear under the APA that rulemaking agencies may not "jump the gun" and implement proposed CAC changes prior to filing with the Secretary of State.^{53, 54}

5. Under Government Code section 11347.5, California state agencies are forbidden from issuing or enforcing regulatory enactments which have not been subject to public notice and comment or to review by OAL.

Government Code section 11347.5 was enacted in part to prevent agencies from circumventing OAL review. One key legislative history document states:

"AB 1013 would also serve as a mechanism to insure that the Armistead [⁵⁵] decision is actually enforced. Agencies that had regulations disapproved by the Office of Administrative Law for noncompliance with the provisions of the Administrative Procedure Act would not be able to circumvent these provisions by enforcing the rule as an 'informal regulation'."⁵⁶

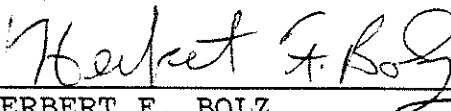
WE CONCLUDE THAT NONE OF THE RECOGNIZED EXCEPTIONS APPLY TO THE CHALLENGED RULES.


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CONCLUSION

For the reasons set forth above, OAL finds that the Proposed Revisions (1) are subject to the requirements of the APA, (2) are "regulations" as defined in the APA, and (3) are therefore invalid and unenforceable unless adopted as regulations and filed with the Secretary of State in accordance with the APA.

DATE: September 22, 1987


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HFB:hfb/vsc:twm/87.12

- 1 In this proceeding, William C. Dixon, 1705 Murchison Drive, P.O. Box 921, Burlingame, California 94010, (415) 697-1400 (Department of Higher Education), represented the California Community College Association/California Teachers Association/National Education Association Executive Committee (requester). The Board of Governors of the California Community Colleges was represented by Thomas Nussbaum, Esq., Vice-Chancellor and General Counsel, 1107 9th St., Sacramento, CA 95814 (916) 445-8752.

- 2 The legal background of the regulatory determination process --including a survey of governing case law--is discussed at length in note 2 to 1986 OAL Determination No. 1 (Board of Chiropractic Examiners, April 9, 1986, Docket No. 85-011), California Administrative Notice Register 86, No. 16-Z, April 18, 1986, pp. B-14--B-16; typewritten version, notes pp. 1-4. See also Wheeler v. State Board of Forestry (1983) 144 Cal.App.3d 522, 192 Cal.Rptr. 693 (overturning Board's decision to revoke license for "gross incompetence in . . . practice" due to lack of regulation articulating standard by which to measure licensee's competence); City of Santa Barbara v. California Coastal Zone Conservation Commission (1977) 75 Cal.App.3d 572, 580, 142 Cal.Rptr. 356, 361 (rejecting Commission's attempt to enforce as law a rule specifying where permit appeals must be filed--a rule appearing solely on a form not made part of the CAC). For an additional example of a case holding a "rule" invalid because (in part) it was not adopted pursuant to the APA, see National Elevator Services, Inc. v. Department of Industrial Relations (1982) 136 Cal.App.3d 131, 186 Cal.Rptr. 165 (internal legal memorandum informally adopting narrow interpretation of statute enforced by DIR). Also, in Association for Retarded Citizens--California v. Department of Developmental Services (1985) 38 Cal.3d 384, 396 n.5, 211 Cal.Rptr. 758, 764 n.5, the court avoided the issue of whether a DDS directive was an underground regulation, deciding instead that the directive presented "authority" and "consistency" problems. In Johnston v. Department of Personnel Administration (1987) 191 Cal.App.3d 1218, _____, 236 Cal.Rptr. 853, 857, the Court found that the Department of Personnel Administration's "administrative interpretation" regarding the protest procedure for transfer of civil service employees was not promulgated in substantial compliance with the APA and therefore was not entitled to the usual deference accorded to formal agency interpretation of a statute.

- 3 The requester also asks OAL to decide whether or not a document prepared by Solano Community College ("Solano") entitled "Guidelines for Completing Official Course Information (section k)" is a "regulation." We do not

reach this issue. Where Solano is concerned, the requester failed to comply with the requirement of Title 1, CAC, section 124(c) (filing declaration stating that copy of request was sent to head of affected state agency). Thus, Solano has not been properly named as a party to this proceeding. Further, even assuming Solano had been properly notified of this proceeding, it does not appear that Solano is a state agency under the California APA. See Government Code sections 11000 and 11342, subdivision (a) and Education Code section 72282. Cf. Bonfield, State Administrative Rulemaking (1986), section 2.2.2(a).

- 4 As we have indicated elsewhere, an OAL determination concerning a challenged "informal rule" is entitled to great weight in both judicial and adjudicatory administrative proceedings. See 1986 OAL Determination No. 3 (Board of Equalization, May 28, 1986, Docket No. 85-004), California Administrative Notice Register 86, No. 24-Z, June 13, 1986, p. B-22; typewritten version, pp. 7-8; Culligan Water Conditioning of Bellflower, Inc. v. State Board of Equalization (1976) 17 Cal.3d 86, 94, 130 Cal.Rptr. 321, 324-325. The Legislature's special concern that OAL determinations be given appropriate weight in other proceedings is evidenced by the directive contained in Government Code section 11347.5: "The office's determination shall be published in the California Administrative Notice Register and be made available to . . . the courts." (Emphasis added.)
- 5 The Board did not submit a Response to this Request for Determination. In general, in order to obtain full presentation of contrasting viewpoints, we encourage affected agencies to submit responses. If the affected agency concludes that part or all of the challenged rule is in fact an underground regulation, it would be helpful, if circumstances permit, for the agency to concede that point and to permit OAL to devote its resources to analysis of truly contested issues.
- 6 An OAL finding that a challenged rule is illegal unless adopted "as a regulation" does not of course exclude the possibility that the rule could be validated by subsequent incorporation in a statute.
- 7 Pursuant to Title 1, CAC, section 127, this Determination shall become effective on the 30th day after filing with the Secretary of State.

- 8 We refer to the portion of the APA which concerns rulemaking by state agencies: Chapter 3.5 of Part 1 ("Office of Administrative Law") of Division 3 of Title 2 of the Government Code, Sections 11340 through 11356. Chapters 4 and 5, also part of the APA, concern administrative adjudication rather than rulemaking.
- 9 Former Education Code sections 22500-22757.5. Currently, largely contained in Education Code sections 66000-67361.
- 10 Former Education Code section 185. Currently, Education Code section 71000.
- 11 Education Code sections 66700-66701 and 71000-71094.
- 12 Community services courses are also offered.
- 13 Title 5, CAC, section 55100(b).
- 14 We discuss the affected agency's rulemaking authority (see Gov. Code section 11349, subdivision (b)) in the context of reviewing a Request for Determination for the purposes of exploring the nature of the dispute and of attempting to ascertain whether or not the agency's rulemaking statute expressly requires APA compliance. If the affected agency should later elect to submit for OAL review a regulation proposed for inclusion in the California Administrative Code, OAL will, pursuant to Government Code section 11349.1 subdivision (a), review the proposed regulation in light of the APA's procedural and substantive requirements.

The APA requires all proposed regulations to meet the six substantive standards of necessity, authority, clarity, consistency, reference, and nonduplication. OAL does not review alleged "underground regulations" to determine whether or not they meet the six substantive standards applicable to regulations proposed for formal adoption.

The question of whether the challenged rule would pass muster under the six substantive standards need not be decided until such a regulatory filing is submitted to us under Government Code section 11349.1, subdivision (a). At that point, the filing will be carefully reviewed to ensure that it fully complies with all applicable legal requirements.

Comments from the public are very helpful to us in our review

of proposed regulations. We encourage any person who detects any sort of legal deficiency in a proposed regulation to file comments with the rulemaking agency during the 45-day public comment period. Such comments may lead the rulemaking agency to modify the proposed regulation.

If review of a duly-filed public comment leads us to conclude that a regulation submitted to OAL does not in fact satisfy an APA requirement, OAL will disapprove the regulation. Government Code section 11349.1.

- 15 Government Code section 11342, subdivision (a). See Government Code sections 11343 and 11346. See also 27 Ops.Cal.Atty.Gen. 56, 59 (1956).
- 16 See Poschman v. Dumke (1973) 31 Cal.App.3d 932, 943, 107 Cal.Rptr. 596, 609.
- 17 The fact that the Board submitted a series of regulatory changes to OAL in 1985 that were very similar to the Proposed Revisions under review today indicates that the Board recognizes the Board rules must be adopted pursuant to the APA.
- 18 California Community Colleges, "Course Standards Handbook," p.2-3 (July 1987).
- 19 Id.
- 20 "'Matriculation' means a process that brings a college and a student who enrolls for credit into an agreement for the purpose of realizing the student's educational objectives." Education Code section 78212(a).
- 21 "[T]he act or process of remedying or overcoming learning disabilities or problems." Webster's New World Dictionary (2d College Edition, 1982), p. 1201.
- 22 The public notice was published in California Administrative Notice Register 85, No. 22-Z, May 31, 1985, p. A-5.
- 23 As used in the APA the word "adopt" (or "adoption") has two discrete meanings. One meaning is used to describe when the head of a state agency officially approves a rule for

submission to OAL. (See Government Code section 11346.5, subdivision (a)(1).) The other meaning is used to describe when the proposed agency rule is adopted by the State (after being approved by OAL and filed with the Secretary of State) and becomes legally effective. (See Government Code section 11344, subdivision (a).)

- 24 Just as specialists in higher education at the community college level became concerned over the lack of sufficiently rigorous standards in the courses offered by local colleges, so members of the Legislature became concerned over the lack of sufficiently rigorous standards in the regulations adopted by state agencies. In dramatic 1979 amendments to the APA, the Legislature declared:

"(a) There has been an unprecedented growth in the number of administrative regulations in recent years.

(b) The language in many regulations is frequently unclear and unnecessarily complex, even when the complicated and technical nature of the subject matter is taken into account. The language is often confusing to the persons who must comply with the regulations.

(c) Substantial time and public funds have been spent in adopting regulations, the necessity for which has not been established.

(d)

(e) There exists no central office in state government with the power and duty to review regulations to ensure that they are written in a comprehensible manner, are authorized by statute and are consistent with other law." [Emphasis added.] [Government Code section 11340 (Statutes of 1979, chapter 567, section 1)]

The Legislature further declared

"that it is in the public interest to establish an Office of Administrative Law which shall be charged with the orderly review of adopted regulations. It is the intent of the Legislature that the purpose of such review shall be to reduce the number of administrative regulations and to improve the quality of those regulations which are adopted." [Emphasis added.] [Government Code section 11340.1]

- 25 Government Code section 11349.3, subdivision (c) became effective June 1, 1986.

26 This withdrawal letter outlined twenty-five deficiencies. (See California Administrative Notice Register 85, No. 44-Z, November 1, 1985, pp.B-5--B-9.) For example, the proposal mandated all associate degree courses to henceforth "require critical thinking" and "require the use of college level educational materials" (emphasis added)--but made no effort at all to define these crucial terms. OAL found that failure to define these two pivotal terms violated the "clarity" standard, which requires that regulations be written "so that [their] meaning will be easily understood by those persons directly affected by them." [Emphasis added.] Government Code section 11349(c).

The term "directly affected" is elaborated upon in an OAL regulation, found in Title 1, CAC, section 16(b)(4), as follows:

"(b) Persons shall be presumed to be 'directly affected' if they:

(1) are legally required to comply with the regulation; or

(2) are legally required to enforce the regulation; or

(3) incur from the enforcement of the regulation a benefit that is not common to the public in general; or

(4) incur from the enforcement of the regulation a detriment that is not common to the public in general." [Emphasis added.]

We quote this definition of "directly affected" for two reasons: it shows that it is indeed possible to define complex terms, and it serves to highlight the need for the "clarity" standard in the community college context.

We recognize that some terms are difficult to define. However, there are two reasons it is especially important to define those difficult terms. To begin with, the APA requires regulations to be clear. The Legislature specifically noted that regulatory "language is often confusing to the persons who must comply with [it]." Government Code section 11340(b). Also, the more difficult the term, the more is the individual who must deal with the regulation in need of guidance.

Also, special factors related to community colleges in particular suggest that "clarity" is especially important in

that context. According to the requester, some of those who must comply with the regulations (i.e., local college faculty serving on curriculum committees) contend that "critical thinking" and "college level" are "vague, subjective, and imprecise." (Request for Determination, p.1.) Further, an official Board publication states that "representatives of the [community college] districts [have called] for a clearer definition of 'college level'." (Course Standards Handbook, pp. 2-3.) [Emphasis added.]

Among those most directly affected by the Proposed Revisions are current and potential community college students and their families. It is apparent that some of these students will "incur a detriment" from implementation of the new course standards. They may be unable to qualify for admission to courses they may need to complete a degree on the grounds that they do not possess sufficient skills. Clearly, these students would be interested in commenting upon the reform plan prior to its implementation. However, how can they comment upon whether the critical term "college level" is appropriately defined if this term is defined not at all? Can lower-skilled students be expected to make sense of proposed policies, when some faculty members are baffled?

Finally, we note that Education Code section 78201.5 defines "credit course" in part as "a course which is determined to be of college level . . . by the board of governors." [Emphasis added.] Is it consistent with this code section for the Board to grant local curriculum committees total discretion in defining the term "college level"?

27 Government section 11346.4, subdivision (b).

28 Attachment A is intended to facilitate identification of the challenged rules by showing deletions from existing regulations in strikeout and additions to existing regulations by underlining.

29 GENERAL GUIDELINES

1. Districts are expected to implement the new course standards "not later than July 1, 1988." (PP. 2 and 4.)

2. Districts are "required" to promptly "do [a] comprehensive review of curricula" so they can "conform courses to the new standards and [] publish the resultant changes in college catalogs in advance [sic] of their enforcement." (P. 4.) [Emphasis added.]

3. An "associate degree course" is defined as a course which (a) has been designated as appropriate to the associate degree in accordance with [the reformulated] requirements of Section 55805.5 and (b) satisfies numerous newly-created requirements.

RULES APPLYING TO ASSOCIATE DEGREE CREDIT COURSES

4. Associate degree credit courses must be recommended by district curriculum committees as meeting numerous new requirements.

5. The district (or college) curriculum committee shall (a) be established by the mutual agreement of the district (or college) administration and the academic senate and (b) either be a committee of academic senate or a committee which shall include faculty and may otherwise be comprised in any way that is mutually agreeable to the district (or college) and the academic senate.

6. Course readings listed in a course outline must be specified as "required."

7. Grades must be based on demonstrated proficiency in the subject evidenced at least in part by essays (or, if deemed appropriate by the instructor, problem solving exercises or skills demonstrations by students).

8. The local governing board must specify the relationship between credits granted for a course and the actual hours of instruction (or performance criteria).

9. Each unit of credit requires a minimum of three hours work per week, including class time, prorated for short term, lab, and activity courses.

10. Each course must treat subject matter with a scope and intensity which requires students to study independently outside of class time.

11. When the curriculum committee deems appropriate, students must demonstrate entrance skills before enrolling in certain courses.

12. When language or computational skills at the associate degree level are deemed necessary for student success by the curriculum committee, the college may require students to demonstrate eligibility for enrollment in associate degree credit courses in English or mathematics prior to permitting enrollment in certain courses.

13. In order to participate in the course, students must have the ability to think critically and to understand and apply

concepts at levels determined by the curriculum committee to be college level.

14. Courses must require learning skills and a vocabulary which the curriculum committee deems appropriate for a college course.

15. Educational materials used in the course must be judged by the curriculum committee to be "college level."

RULES APPLYING TO ASSOCIATE DEGREE NON-CREDIT COURSES

16. Credit courses shall either apply toward the associate degree or not so apply. (Existing law provides only for "credit courses"--not differentiating between those that do and do not apply to the associate degree.)

17. Course readings listed in a course outline must be specified as "required."

18. The local governing board must specify the relationship between credits granted for a course and the actual hours of instruction (or performance criteria).

19. When deemed appropriate by the local curriculum committee, students shall be required to complete prerequisites for the course prior to enrollment.

RULES APPLYING TO NON-CREDIT COURSES

20. Each course shall be recommended by the local curriculum committee as meeting the educational needs of enrolled students.

21. Each course treats the subject matter in a manner and uses resource materials, teaching methods, and standards of attendance which the local curriculum committee deems appropriate for the enrolled students.

RULES APPLYING TO COMMUNITY SERVICES CLASS

22. Each course must provide subject matter content, resource materials, and teaching methods which the district governing board deems appropriate for the enrolled students.

RULES APPLYING TO ASSOCIATE DEGREE CREDIT COURSES

23. The category "associate degree credit course" shall include the following:

- a. All lower division courses accepted toward the baccalaureate degree by CSU or UC.

b. Courses that apply to the major in non-baccalaureate occupational fields.

c. English courses not more than one level below the first transfer level composition course (English 1A), provided that each individual student may receive degree credit for only one such course.

d. Elementary Algebra and all mathematics courses above the level of that course.

e. Credit courses in English and mathematics taught in or on behalf of other departments, if such courses have been determined by the local board of trustees to require entrance skills equivalent to those necessary for the courses specified in items 23 c and d.

30 See California Administrative Notice Register 87, No. 26-Z, dated June 26, 1987, pages B-19--B-33, for text of the Request and exhibits.

31 See note 1, supra, for address of requester. At the time of the Request, Mr. Dixon was the Vice President of CTA. He is now the President. He is also on the faculty of Solano Community College.

32 P. 1.

33 P. 2.

34 Id., p. 3.

35 Id., p. 5.

36 See Solano's Draft, "Guidelines for Completing Official Course Information (Section K)," and other exhibits of requester, published in California Administrative Notice Register 87, No. 26-Z, June 26, 1987, pp. B-27--B-33.

37 See Faulkner v. California Toll Bridge Authority (1953) 40 Cal.2d 317, 324 (point 1); Winzler & Kelly v. Department of Industrial Relations (1981) 121 Cal.App.3d 120, 174 Cal.Rptr. 744 (points 1 and 2); cases cited in note 2 of 1986 OAL Determination No. 1. A complete reference to this earlier Determination may be found in note 2 to today's

Determination.

- 38 See "Informative Digest" in the notice of the Board published in the California Administrative Notice Register 86, No. 21-Z, May 23, 1986, p. A-7.
- 39 The Proposed Revisions appear in the California Administrative Notice Register 87, No. 26-Z, June 26, 1987, pp. B-19--33.
- 40 Further, in reviewing the Proposed Revisions and the context in which they appear, OAL notes that the Board has published these Proposed Revisions in a "Course Standards Handbook" ("Handbook"), dated July 1987, with a cover letter dated July 9, 1987, addressed to Superintendents/Presidents, Chief Instructional Officers and Academic Senate Presidents, presumably to community colleges statewide. This Handbook indicates that the new standards are to be implemented by July 1988.

Our decision today is limited to the Proposed Revisions. We express no opinion as to the validity of the remainder of the Handbook under Government Code section 11347.5.

- 41 The Proposed Revisions implement, interpret, or make specific a large number of statutes and regulations. The principal regulations the Revisions "interpret" are Title 5, CAC, sections 55002 and 55805.
- 42 The following provisions of law may also permit agencies to avoid the APA's requirements under some circumstances, but do not apply to the case at hand:

a. Rules relating only to the internal management of the state agency. (Gov. Code, sec. 11342, subd. (b).)

b. Forms prescribed by a state agency or any instructions relating to the use of the form, except where a regulation is required to implement the law under which the form is issued. (Gov. Code, sec. 11342, subd. (b).)

c. Rules that "[establish] or [fix] rates, prices or tariffs." (Gov. Code, sec. 11343, subd. (a)(1).)

d. Rules directed to a specifically named person or group of persons and which do not apply generally or throughout the state. (Gov. Code, sec. 11343, subd.

(a)(3).)

e. Legal rulings of counsel issued by the Franchise Tax Board or the State Board of Equalization. (Gov. Code, sec. 11342, subd. (b).)

f. Contractual provisions previously agreed to by the complaining party. City of San Joaquin v. State Board of Equalization (1970) 9 Cal.App.3d 365, 376, 88 Cal.Rptr. 12, 20 (sales tax allocation method was part of a contract which plaintiff had signed without protest); see Roth v. Department of Veterans Affairs (1980) 110 Cal.App.3d 622, 167 Cal.Rptr. 552 (dictum); Nadler v. California Veterans Board (1984) 152 Cal.App.3d 707, 719, 199 Cal.Rptr. 546, 553 (same); but see Government Code section 11346 (no provision for non-statutory exceptions to APA requirements); see International Association of Fire Fighters v. City of San Leandro (1986) 181 Cal.App.3d 179, 182, 226 Cal.Rptr. 238, 240 (contracting party not estopped from challenging legality of "void and unenforceable" contract provision to which party had previously agreed); see Perdue v. Crocker National Bank (1985) 38 Cal.3d 913, 926, 216 Cal.Rptr. 345, 353 ("contract of adhesion" will be denied enforcement if deemed unduly oppressive or unconscionable).

The above is not intended as an exhaustive list of possible APA exceptions. Further information concerning APA exceptions is contained in a number of previously issued OAL determinations. The Index of OAL Regulatory Determinations (available from OAL, 916-323-6225) is a helpful guide for locating such information.

43 PP. 2-6 and 2-8.

44 Cited in note 18, above, reference is to p. 2 of the Statement of Intent.

45 Our research has revealed no cases in which section 78200.5(a) has been authoritatively construed in published appellate opinions.

46 1986 OAL Determination No. 8 (Department of Food and Agriculture, October 15, 1986, Docket No. 86-004), California Administrative Notice Register 86, No. 44-Z, October 31, 1986, p. B-34; typewritten version, p. 20.

- 47 Natural Resources Defense Council, Inc. v. Arcata National Corporation (1976) 59 Cal.App.3d 959, 965, 131 Cal.Rptr. 172 (harmonize different statutes to give effect to all).
- 48 Id.
- 49 1986 OAL Determination No. 5 (Board of Osteopathic Examiners, August 13, 1986, Docket No. 85-002), California Administrative Notice Register 86, No. 35-Z, August 28, 1986, p. B-17; typewritten version pp. 10-11.
- 50 The significant advantages of public participation in agency rulemaking are noted in Chamber of Commerce of United States v. OSHA (D.C.Cir.1980) 636 F.2d 464, 470-471, wherein a federal agency had issued an informal rule which disagreed with judicial interpretation of the underlying statute:

"The Assistant Secretary should not treat the procedural obligations under the APA as meaningless ritual. Parties affected by the proposed legislative rule are the obvious beneficiaries of proper procedures. Prior notice and an opportunity to comment permit them to voice their objections before the agency takes final action. Congress enacted 5 U.S.C. section 553 in part to "afford adequate safeguards to private interests." H.R. 1203, 79th Cong., 1st Sess. (Comm. Print June, 1945) (quoting S. Doc. 8, 77th Cong., 1st Sess. 103 (1941) (Final report of Att'y General's Comm. on Ad. Proc.)), reprinted in S. Doc. 248, 79th Cong., 2d Sess. 20 (1946) (official legislative history of the Administrative Procedure Act). Given the lack of supervision over agency decisionmaking that can result from judicial deference and congressional inattention, see Cutler & Johnson, Regulation and the Political Process, 84 Yale L.J. 1395 (1975), this protection, as a practical matter, may constitute an affected party's only defense mechanism.

An agency also must not forget, however, that it too has much to gain from the assistance of outside parties. Congress recognized that an agency's "knowledge is rarely complete, and it must learn the . . . viewpoints of these whom the regulation will affect. . . . [Public] participation . . . in the rule-making process is essential in order to permit administrative agencies to inform themselves" H.R. 1203, 79th Cong., 1st Sess. (Comm. Print June, 1945) (quoting S. Doc. 8, 77th Cong., 1st Sess. 103 (1941) (Final report of Att'y General's Comm. on Ad. Proc.)), reprinted in S. Doc. 248, 79th Cong., 2d Sess. 20 (1946). Comments from

sources outside of the agency may shed light on specific information, additional policy considerations, weaknesses in the proposed regulation, and alternative means of achieving the same objectives. See National Petroleum Refiners Association v. FTC, 482 F.2d 672, 683 (D.C.Cir.1973), cert. denied, 415 U.S. 951, 94 S.Ct. 1475, 39 L.Ed.2d 567 (1974). By the same token, public scrutiny and participation before a legislative rule becomes effective can reduce the risk of factual errors, arbitrary actions, and unforeseen detrimental consequences. See Freedman, Summary Action by Administrative Agencies, 40 U.Chi.L.Rev. 1, 27-30 (1972).

Finally, and most important of all, highhanded agency rulemaking is more than just offensive to our basic notions of democratic government; a failure to seek at least the acquiescence of the governed eliminates a vital ingredient for effective administrative action. See Hahn, Procedural Adequacy in Administrative Decisionmaking: A Unified Formulation (pt. 1), 30 Ad.L.Rev. 467, 500-04 (1978). Charting changes in policy direction with the aid of those who will be affected by the shift in course helps dispel suspicions of agency predisposition, unfairness, arrogance, improper influences, and ulterior motivation. Public participation in a legislative rule's formulation decreases the likelihood that opponents will attempt to sabotage the rule's implementation and enforcement. See Bonfield, Public Participation in Federal Rulemaking Relating to Public Property, Loans, Grants, Benefits, or Contracts, 118 U.Pa.L.Rev. 540, 541 (1970). See generally Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 171-72 & n. 19, 71 S.Ct. 624, 648-649, 95 L.Ed. 817 (1951) (Frankfurter, J., concurring)."

51 California Optometric Association v. Lackner (1976) 60 Cal.app.3d 500, 506, 131 Cal.Rptr. 744, 748; citing California Association of Nursing Homes (1970) Cal.App.3d 800, 810-812, 84 Cal.Rptr. 590.

52 Cf. Education Code section 71023 (Board directed to maximize degree of local autonomy and control in administering community colleges; quoted in text at p. 3.) Obtaining the comments of persons at the grass roots level in the APA public comment and hearing process would seem to be an effective means of ensuring that the views of the various local communities were appropriately considered.

53 1987 OAL Determination No. 9 (Department of Corporations, June 30, 1987, Docket No. 86-015), California Administrative Notice Register 87, No. 27-Z, July 17, 1987, pp. B-31--B-48.

54 Though research has failed to disclose any California cases specifically involving this "premature implementation" issue, two federal appellate opinions shed light on this matter.

The first case, from the United States Court of Appeals for the Second Circuit, involved implementation of a new regulatory policy prior to publication in the Federal Register. The second case, from the U.S. Supreme Court, involves an analogous situation in which certain documents could not be legally implemented until they had been approved by a federal regulatory agency.

Specifically addressing the issue of premature adoption of a directive abrogating precertification of certain occupations for visa issuance, prior to full compliance with the federal APA, Lewis-Mota v. Secretary of Labor (2d Cir. 1972) 469 F.2d 478, declared the directive invalid until 30 days after actual publication in the Federal Register. In the Lewis-Mota case, publication fulfilled the APA requirements. The decision of the United States Court of Appeals for the Second Circuit was made notwithstanding the Secretary's labeling his action as mere announcement of a general statement, within the meaning of an exception to publication requirement. According to the Lewis-Mota Court, ". . . [T]he label that the particular agency puts upon its given exercise of administrative power is not, for our purposes, conclusive; rather it is what the agency does in fact."

The United States Supreme Court reached a similar result in Federal Maritime Commission v. Pacific Maritime Association (1978) 435 U.S. 40, 98 S.Ct. 927. Performing an oversight function analogous to OAL's, the Federal Maritime Commission

"is empowered to 'disapprove, cancel or modify' any . . . agreement that it finds to be 'unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, . . . or to operate to the detriment of the commerce of the United States, or to be contrary to the public interest . . . ' and is directed to approve all filed agreements that do not transgress these standards. Before approval or after disapproval, agreements subject to filing are unlawful and may not be implemented." [Emphasis added; footnote omitted.]

55 Armistead v. State Personnel Board (1978) 22 Cal.3d 198, 149

Cal.Rptr. 1.

- 56 OAL's Enrolled Bill Report on AB 1013, dated February 10, 1982.

ATTACHMENT A
(1 of 4)

Section 55002. Standards and Criteria for Courses and Classes.

(a) ~~A/credit~~ An associate degree course is a course which
~~at a/university~~ has been designated as appropriate to the associate
degree in accordance with the requirements of Section 55805.5, and
the following:

(1) Is recommended by the/responsible college/officials and/the
academic/senate/or/other/appropriate/faculty/body/as/being/of
appropriate/academic/rigor /or district curriculum committee
as meeting the requirements of this subsection and has been
approved by the local district governing board as a collegiate
course meeting the needs of the students eligible for admission.

The college and/or district curriculum committee shall be
established by the mutual agreement of the college and/or
district administration and the academic senate. The committee
shall either be a committee of the academic senate or a committee
which shall include faculty and may otherwise be comprised in any
way that is mutually agreeable to the college and/or district and
the academic senate.

(2) Is taught by a credentialed instructor.

(3) Is offered as described in an outline and/or curriculum guide
in college official files. That outline and/or curriculum guide
shall specify the unit value, scope, objectives, and content in
terms of a specific body of knowledge, required appropriate
reading and writing assignments, and other outside of class
assignments, instructional methodology and methods of evaluation
for determining whether the stated objectives have been met by
students.

(4) Is taught in accordance with a set of instructional objectives
common to all students enrolled in the course.

(5) Provides for measurement of student performance in terms of
the stated course objectives and culminates in a formal recorded
grade based upon uniform standards in accordance with Section
55758 of this part, and which is permanently recorded as an
evaluation of student performance;/ bases grades on demonstrated
proficiency in subject matter and the ability to demonstrate that
proficiency, at least in part, by means of essays, or, in courses
where the instructor deems them to be appropriate, problem solving
exercises or skills demonstrations by students.

(6) Grants units of credit based upon a relationship specified by
the governing board, between the number of units assigned to the
course and the number of lecture and/or laboratory hours or
performance criteria specified in the course outline;/ and
requires a minimum of three hours of work per week including

class time for each unit of credit, prorated for short term, lab and activity courses.

(7) Treats subject matter with a scope and intensity which requires students to study independently outside of class time. Shall require, when so designated, the completion of appropriate prerequisites.

(8) Requires, when the college and/or district curriculum committee deems appropriate, entrance skills and consequent prerequisites for the course before students are enrolled.

(9) Requires as a pre-or-co-requisite to enrollment in other courses throughout the degree and certificate curricula, eligibility for enrollment in associate degree credit courses in English and/or mathematics when language and/or computational skills at the associate degree level are deemed by the college and/or district curriculum committee as necessary for success in such courses.

(10) Requires, in order to participate in the course, the ability to think critically and to understand and apply concepts at levels determined by the curriculum committee to be college level.

(11) Requires learning skills and a vocabulary which the curriculum committee deems appropriate for a college course.

(12) Requires that educational materials used be judged by the curriculum committee to be college level.

(13) Allows repeated enrollment only as permitted by provisions of Division 2 (commencing with Section 51000), Sections 55761-55763 and 58161 of this part.

(b) A credit course designated by the governing board of a district as not applicable to the associate degree is a course which, at a minimum:

(1) Is recommended by the college and/or district curriculum committee and has been approved by the local district governing board as a course meeting the needs of the students eligible for admission.

(2) Is taught by a credentialed instructor.

(3) Is offered as described in an outline and/or curriculum guide in official college files. That outline and/or curriculum guide shall specify the unit value, scope, objectives, and content in terms of a specific body of knowledge, required reading and writing assignments, other outside of class assignments, instructional methodology and methods of evaluation for determining whether the stated objectives have been met by students.

(4) Is taught in accordance with a set of instructional objectives common to all students.

(5) Provides for measurement of student performance in terms of the stated course objectives and culminates in a formal recorded grade based upon uniform standards in accordance with Section 55758 of this part, which is permanently recorded as an evaluation of student performance.

(6) Grants units of credit based upon a relationship specified by the district governing board between the number of units assigned to the course and the number of lecture and/or laboratory hours or performance criteria specified in the course outline.

(7) Shall require, when the college and/or district curriculum committee deems appropriate, the completion of prerequisites for the course before students are enrolled.

(8) Allows repeated enrollment only as permitted by provisions of Division 2 (commencing with Section 51000) Sections 55671-55763 and 58161 of this part.

(c) A noncredit course is a course which, at a minimum:

(1) Is recommended by the college and/or district curriculum committee and approved by the local district governing board as a course meeting the educational needs of the enrolled students.

(2) Is taught by a credentialed instructor. A/supplementary lecturer/need not hold a/certificat/ if he/ or she/lectures fewer than/four/times/in/a/semester/or/quarter/

(3) Treats subject matter and uses resource materials, teaching methods, and standards of attendance and achievement which the college and/or district curriculum committee deems appropriate for the enrolled students.

(4) Is conducted in accordance with a course outline and/or curriculum guide in official college files. That outline and/or curriculum guide shall specify the scope, objectives, content, instructional methodology, and methods of evaluation for determining whether the course objectives have been met.

(d) A community services class at a minimum:

(1) Is approved by the local district governing board.

(2) Is designed for the physical, mental, moral, economic, or civic development of persons enrolled therein.

(3) Provides subject matter content, resource materials, and teaching methods ~~deemed~~ which the district governing board deems appropriate for the enrolled students.

(4) Is conducted in accordance with a predetermined strategy or plan.

(5) Is open to all members of the community.

(6) Attendance in community services classes may not be claimed for apportionment purposes.

NOTE: Authority cited: Sections 66700, 71020, 71022, 71027 and 71066 Education Code. Reference: Sections 71027 66701, 71066 and 72285.

55805.5 Criteria. The criteria established by the governing board of a community college district to implement its philosophy on the associate degree shall conform to the standards specified in Section 55002(a) and shall also provide that associate degree credit courses:

(a) Include all lower division courses accepted toward the baccalaureate degree by the California State University or University of California.

(b) Include all courses that apply to the major in non-baccalaureate occupational fields.

(c) Include English courses not more than one level below the first transfer level composition course, typically known as English 1A. Each student may count as credit toward the associate degree only one course below the first transfer level composition course.

(d) Include all mathematics courses above and including Elementary Algebra.

(e) Include credit courses in English and mathematics taught in or on behalf of other departments and which, as determined by the local board of trustees, require entrance skills at a level equivalent to those necessary for the courses specified in subsections (c) and (d) above.

NOTE: Authority cited: Sections 66700, 71022 and 71066, Education Code. Reference: Sections 66701, 71066 and 72285, Education Code.